

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DIANE L.,

Plaintiff,

v.

5:21-CV-0383
(ML)

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

APPEARANCES:

OF COUNSEL:

OLINSKY LAW GROUP
Counsel for the Plaintiff
250 South Clinton Street-Suite 210
Syracuse, New York 13202

ALEXANDER C. HOBAICA, ESQ.

SOCIAL SECURITY ADMINISTRATION
Counsel for the Defendant
J.F.K. Federal Building, Room 625
15 New Sudbury Street
Boston, Massachusetts 02203

CHRISTINE A. SAAD, ESQ.
Special Assistant U.S. Attorney

MIROSLAV LOVRIC, United States Magistrate Judge

ORDER

Currently pending before the Court in this action, in which Plaintiff seeks judicial review of an adverse administrative determination by the Commissioner of Social Security, pursuant to 42 U.S.C. § 405(g), are cross-motions for judgment on the pleadings.¹ Oral argument was heard

¹ This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18. Under that General Order once issue has been joined, an action such as this is considered procedurally, as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

in connection with those motions on September 22, 2022, during a telephone conference conducted on the record. At the close of argument, I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner's determination was supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by Plaintiff in this appeal.

After due deliberation, and based upon the Court's oral bench decision, which has been transcribed, is attached to this order, and is incorporated herein by reference, it is

ORDERED as follows:

- 1) Plaintiff's motion for judgment on the pleadings (Dkt. No. 15) is DENIED.
- 2) Defendant's motion for judgment on the pleadings (Dkt. No. 19) is GRANTED.
- 3) The Commissioner's decision denying Plaintiff Social Security benefits is AFFIRMED.
- 4) Plaintiff's Complaint (Dkt. No. 1) is DISMISSED.
- 5) The Clerk of Court is respectfully directed to enter judgment, based upon this determination, DISMISSING Plaintiff's Complaint in its entirety and closing this case.

Dated: September 23, 2022
Binghamton, New York

A handwritten signature in black ink, reading "Miroslav Lovric", written over a horizontal line.

Miroslav Lovric
United States Magistrate Judge
Northern District of New York

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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vs.

5:21-CV-0383

COMMISSIONER OF SOCIAL SECURITY

DECISION AND ORDER

September 23, 2022

The HONORABLE MIROSLAV LOVRIC,
DISTRICT MAGISTRATE JUDGE

A P P E A R A N C E S

For Plaintiff: ALEXANDER HOBAICA, ESQ.

For Defendant: CHRISTINE SAAD, ESQ.

*Ruth I. Lynch, RPR, RMR, NYSRCR
Official United States Court Reporter
Binghamton, New York 13901*

1 THE COURT: The Court begins its analysis and
2 decision as follows:

3 First, plaintiff has commenced this proceeding
4 pursuant to Title 42 United States Code Section 405(g) to
5 challenge the adverse determination by the Commissioner of
6 Social Security finding that she was not disabled at the
7 relevant times and therefore ineligible for the benefits
8 that she sought.

9 By way of background the Court starts as follows:
10 Plaintiff was born in 1980. She is currently 41 years of
11 age. She was approximately 34 years of age at the alleged
12 onset of her disability on November 1st of 2014. At the
13 time of her administrative hearing on August 11th of 2017,
14 plaintiff lived with her mother, her 18-year-old son, and
15 her 11-year-old daughter. Plaintiff stands approximately 5
16 feet 5 inches in height and weighs approximately 165 pounds.
17 Plaintiff completed an associate's degree and can
18 communicate in English.

19 Procedurally the Court sets forth the following in
20 the record. Plaintiff applied for Title II benefits on
21 May 20th of 2015, alleging an onset date of November 1,
22 2014. In support of her claim for disability benefits,
23 plaintiff claims disability based on a back injury, right
24 shoulder injury, and migraines. Administrative Law Judge
25 Shawn Bozarth conducted a hearing on August 11th of 2017 to

1 address plaintiff's application for benefits. In her
2 request for a review to the Social Security Administration
3 Appeals Council, plaintiff challenged the ALJ's appointment
4 under the Appointments Clause of the United States
5 Constitution, that being U.S. Constitution Article II
6 Section 2 Clause 2. The Appeals Council vacated the ALJ's
7 decision and Administrative Appeals Judges Edward G. Aldrich
8 and A. Van Soest issued a new independent unfavorable
9 decision on August 30th of 2019. Plaintiff appealed to the
10 U.S. District Court for the Northern District of New York
11 before U.S. Magistrate Judge Andrew Baxter, where the
12 parties agreed on July 9th of 2020 by stipulation that the
13 decision of the Appeals Council be vacated and remanded.

14 On August 17th of 2020 the Appeals Council
15 remanded to an ALJ for further proceedings, consistent with
16 that order. Thereafter, ALJ David Romeo conducted a new
17 hearing on January 20th of 2021. ALJ Romeo issued an
18 unfavorable decision on February 2nd of 2021.

19 This action was commenced on April 5th of 2021,
20 and it is therefore timely.

21 In his decision, ALJ Romeo applied the five --
22 excuse me, applied the familiar five-step test for
23 determining disability claim.

24 At step one, the ALJ concluded that plaintiff had
25 not engaged in substantial gainful activity during the

1 period from her alleged onset date of November 1, 2014
2 through March 13 of 2018. The ALJ noted that plaintiff was
3 awarded workers' compensation benefits during the period at
4 issue.

5 At step two, the ALJ concluded that from
6 November 1st, 2014 through March 13th of 2018, plaintiff had
7 the following severe impairments: Lumbar degenerative disc
8 disease, with L5 to S1 radiculopathy; status post right
9 shoulder acromioplasty migraine headaches; obesity;
10 generalized anxiety disorder; major depressive disorder; and
11 PTSD.

12 At step three, ALJ Romeo concluded that from
13 November 1, 2014 through March 13th of 2018 plaintiff did
14 not have an impairment or combination of impairments that
15 met or medically equalled the severity of one of the listed
16 impairments in 20 CFR Sections 404.1520(d), 404.1525, and
17 404.1526, and the ALJ focusing on the following listings:
18 Listing 1.02 dealing with major dysfunction of a joint;
19 listing 1.04 dealing with disorders of the spine; listing
20 11.02 dealing with epilepsy; listing 12.04 dealing with
21 depressive, bipolar, and related disorders; listing 12.06
22 dealing with anxiety and obsessive compulsive disorders; and
23 listing 12.15 dealing with trauma- and stressor-related
24 disorders. The ALJ also considered the plaintiff's obesity
25 under SSR 19-2p in combination with her other impairments

1 and mental disorders pursuant to 20 CFR Sections 404.1520a
2 and 416.920a.

3 Next, the ALJ next determined that from
4 November 1, 2014 through March 13, 2018, plaintiff had the
5 residual functional capacity to perform sedentary work
6 except that plaintiff could never climb ropes, ladders, or
7 scaffolds; that plaintiff could occasionally climb ramps,
8 stairs, balance, stoop, kneel, crouch, crawl, and operate
9 foot controls; that plaintiff could frequently reach,
10 handle, finger, and feel with both upper extremities; also
11 that plaintiff could have no exposure to high, exposed
12 places or moving mechanical parts. The ALJ also concluded
13 that plaintiff could tolerate a moderate noise intensity
14 level; that plaintiff could also tolerate occasional
15 exposure to light brighter than that typically found in an
16 indoor work environment, such as an office or retail store.
17 The ALJ concluded that plaintiff could work at a consistent
18 pace throughout the workday but not at a production rate
19 pace in which each task must be completed within a strict
20 time deadline. Plaintiff -- the ALJ concluded that
21 plaintiff could tolerate occasional interaction with
22 coworkers, supervisors, and the public. The ALJ also
23 concluded plaintiff could also tolerate occasional changes
24 in the work setting. The ALJ also indicated plaintiff
25 needed an option to stand for 5 minutes every 20 minutes of

1 sitting but could remain on task while standing. The ALJ
2 also indicated plaintiff required a cane to walk but not for
3 balance while standing. The ALJ also indicated plaintiff
4 could tolerate a low level of work pressure which is defined
5 as work not requiring multitasking, very detailed job tasks,
6 significant independent judgment, very short deadlines, or
7 teamwork in completing job tasks.

8 At step four, the ALJ concluded that plaintiff
9 could not perform the past relevant work as a nurse
10 assistant, nursery school attendant, or salesperson.

11 Next, at step five, the ALJ concluded that based
12 on the testimony of the vocational expert and considering
13 plaintiff's age, education, work experience, and residual
14 functional capacity, from November 1, 2014 through March 13
15 of 2018, that there were jobs that existed in significant
16 numbers in the national economy that plaintiff could have
17 performed. More specifically, the vocational expert
18 testified that plaintiff could have performed the
19 requirements of representative occupations such as an
20 addresser, a stuffer, and polisher of eyeglass frames. The
21 ALJ therefore found that plaintiff was not disabled.

22 Now, as the parties know, this Court's functional
23 role in this case is limited and extremely deferential. I
24 must determine whether correct legal principles were applied
25 and whether the determination is supported by substantial

1 evidence, defined as such relevant evidence as a reasonable
2 mind would find sufficient to support a conclusion. The
3 Second Circuit has noted in *Brault V. Social Security*
4 *Administration Commissioner*, found at 683 F3d. 443, a 2012
5 case, and the Circuit noted therein that this standard is
6 demanding, more so than the clearly erroneous standard. The
7 Second Circuit noted in *Brault* that once there is a finding
8 of fact, that fact can be rejected only if a reasonable
9 fact-finder would have to conclude otherwise.

10 Now, on appeal before this Court, plaintiff raises
11 one contention in their appeal. Plaintiff argues that
12 substantial evidence does not support the ALJ's RFC findings
13 because he failed to properly weigh the opinion evidence of
14 plaintiff -- of plaintiff's treating physician, Dr. Jennie
15 Brown, MD.

16 The Court begins its analysis by setting forth the
17 following: As the parties set forth in their briefs, the
18 opinion of Dr. Brain -- Brown, excuse me. The opinion of
19 Dr. Brown, that is, is subject to the treating physician
20 rule. For the reasons set forth in defendant's brief, I
21 find that substantial evidence supports the ALJ's evaluation
22 of the medical opinion evidence from Dr. Brown. Dr. Brown
23 opined, inter alia, that plaintiff would be off task more
24 than 20 percent of the time during an 8-hour workday and
25 would likely be absent from work more than 4 days per week.

1 The ALJ afforded Dr. Brown's opinion, quote, some
2 but not controlling weight, end of quote, holding that,
3 quote, while most of the proposed limitations have been
4 incorporated into the claimant's RFC, end quote, the ALJ did
5 not incorporate Dr. Brown's assessment regarding plaintiff's
6 ability to remain on task or maintain attendance. In
7 support of this determination the ALJ supportably cited and
8 noted the following: One, normal mental status exams and
9 reported activities and abilities. Two, a 2015 function
10 report, in which plaintiff reported that, A, she did not
11 need special help or reminders to take her medications or
12 tend to her personal needs and grooming; B, plaintiff denied
13 problems with paying attention, following instructions, and
14 getting along with other people, including authority
15 figures; C, plaintiff lived in a house with family and
16 supervised her children's daily living activities; and, D,
17 plaintiff performed self -- self-care tasks, prepared meals,
18 did light cleaning and some laundry, drove, went out alone,
19 handled money, shopped, and attended church and doctor
20 appointments. Further, the ALJ found that all of
21 plaintiff's mental status exams throughout the period at
22 issue had been largely benign.

23 Next, the ALJ properly considered plaintiff's
24 alleged limitations based on her reported migraines. More
25 specifically, the ALJ considered the medical records

1 indicating that in January 2017 plaintiff, quote, was
2 admitted overnight for a migraine headache that had lasted
3 three days and reportedly caused right eye pain and
4 photophobia, end of quote. However, the ALJ supportably
5 concluded that after receiving a Reglan injection and fluid
6 bolus, plaintiff improved. Indeed, the ALJ considered that
7 in February 2017 plaintiff, quote, only had three migraines
8 over the course of the month, end of quote. Thus, the ALJ
9 concluded that plaintiff's statements concerning the
10 intensity, persistence, and limiting effects of her symptoms
11 were not entirely consistent with the medical evidence and
12 other evidence of record.

13 Although plaintiff highlights evidence that may
14 support her position, as long as the ALJ's position is
15 supported by substantial evidence, which the Court here
16 finds it is, it will prevail.

17 Finally, because the ALJ's analysis of Dr. Brown's
18 opinion and corresponding RFC were supported by substantial
19 evidence, plaintiff's derivative challenge to the vocational
20 expert's testimony about jobs consistent with that RFC also
21 fails.

22 For these reasons I find and conclude that
23 plaintiff's motion for judgment on the pleadings is denied.
24 Defendant's motion for judgment on the pleadings is granted.
25 Plaintiff's complaint is hereby dismissed. And the

1 Commissioner's decision denying plaintiff benefits is
2 hereby affirmed.

3 This constitutes the decision and analysis of the
4 Court.

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